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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,260	09/26/2003	Fang Wang	112056-0150	8811
24267	7590	02/04/2008	EXAMINER	
CESARI AND MCKENNA, LLP			BRUCKART, BENJAMIN R	
88 BLACK FALCON AVENUE			ART UNIT	PAPER NUMBER
BOSTON, MA 02210			2155	
			MAIL DATE	DELIVERY MODE
			02/04/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/672,260	WANG ET AL.
Examiner	Art Unit	
Benjamin R. Bruckart	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 18 December 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-40 is/are pending in the application.  
4a) Of the above claim(s) 1-40 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) \_\_\_\_\_ is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) 1-40 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

**Detailed Action**

Claims 1-40 are pending in this Office Action.

Claims 1-40 are subject to an election / restriction requirement.

The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. The Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

**Specification**

The objection to the specification is withdrawn in light of applicant's amendment.

**Election/Restrictions**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-35, are drawn to a method, storage system, and computer readable medium for failover from a first device to a second device, classified in class 709, subclass 223.
- II. Claims 36-40, are drawn to a method and computer readable medium for reconfiguring a second port on a single device for failover of a first port, classified in class 709, subclass 221.

The inventions are distinct, each from the other because of the following reason:

Invention Groups I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention in Group I is failover from a first device to a second device in a computer network. See MPEP § 806.05(c). Invention in Group II has separate utility and is for reconfiguring a single device to handle failover of a port.

Because these inventions are distinct for the reason given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is reminded that to traverse this requirement on the grounds that the groups are not patentably distinct, applicant should present evidence or identify such evidence now of record showing the groups to be obvious variations of one another. If the groups are determined not to be patentably distinct and they remain in this application, any rejection of one group over

prior art will apply equally to all other embodiments. See *Ex parte Appeal No. 315-40, 152 USPQ 71* (Bd. App. 1965). No argument asserting patentability based on the differences between the groups will be considered once the groups have been determined to comprise a single inventive concept.

### Remarks

There are a couple issues to be mentioned in this action.

1. Applicant's remarks state claim 20 is amended but there is no corresponding amendment to the claim in the claim listing.
2. The claim amendments of claim 1 are non-compliant when compared to the previous version based upon the markup. The examiner believes applicant needs to double check and make sure that the new claims conform to the previous version plus the changes.
3. As per the applicant's remarks, the examiner telephones applicant on 1/29/08 in response to the request for interview. If an interview is still requested, please contact examiner at the number below.
4. The 112 rejection is still unclear. The giveback command is indeed a user command to return control, however the examiner cannot find the step of determining directly linked to said giveback command. The examiner suggests adjusting claim 30 language to better reflect the giveback command.
5. Claims 12-17, 20-25, 31-34 will be rejected under 35 U.S.C. 101 as being drawn to a system interpreted to be software by the last page of applicant's specification "the procedures or processes may be implemented in hardware, software, embodied as a computer-readable medium having program instructions, firmware, or a combination thereof."

### Conclusion

A shortened statutory period for reply to this final action is set to expire ONE MONTH from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R Bruckart whose telephone number 571-272-3982.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone numbers for the

organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and after final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the examiner whose telephone number is 571-272-3982.

Benjamin R Bruckart  
Examiner  
Art Unit 2155

  
SAEED NAJJAR  
SUPERVISORY PATENT EXAMINER